



February 22, 2005

HOUSE BILL No. 1439

DIGEST OF HB 1439 (Updated February 17, 2005 3:13 pm - DI 75)

Citations Affected: IC 3-5; IC 3-10; IC 3-11; IC 3-11.5; IC 3-11.7.

Synopsis: Voter identification. Requires a precinct election officer to ask a voter to provide proof of identification before the voter is permitted to vote. Provides that a proof of identification is a document issued by the United States or the state of Indiana that shows the name of the individual to whom the document was issued and a photograph of that individual. Permits the use of an expired document as proof of identification if the document expired after the date of the most recent general or municipal election. Specifies that a voter who is unable or declines to produce proof of identification at the polls receives a provisional ballot if the voter signs the affidavit required for a provisional ballot. Requires the county election board to count the provisional ballot if: (1) the voter appears before the board after leaving the polls and before noon on the Monday following the election, and: (A) produces proof of identification; or (B) executes an affidavit stating that the voter cannot obtain proof of identification, because the voter: (i) is indigent; or (ii) has a religious objection to being photographed; and (2) the voter has not been challenged or required to vote a provisional ballot for any other reason. Specifies that a voter casting an absentee ballot is not required to provide proof of identification. Requires a voter who registered by mail and is voting for the first time in a county election to continue to provide the documentation required by federal law as well producing proof of identification.

Effective: July 1, 2005.

**Brown T, Borders, Walorski,
Behning**

January 18, 2005, read first time and referred to Committee on Elections and Apportionment.
February 21, 2005, amended, reported — Do Pass.

HB 1439—LS 7659/DI 75+



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February 22, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1439

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 3-5-2-40.4 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2005]: **Sec. 40.4. "Proof of identification" refers to a document**
4 **that satisfies all the following:**

5 (1) **The document shows the name of the individual to whom**
6 **the document was issued, and the name conforms to the name**
7 **in the individual's voter registration record.**

8 (2) **The document shows a photograph of the individual to**
9 **whom the document was issued.**

10 (3) **The document includes an expiration date, and the**
11 **document:**

12 (A) **is not expired; or**

13 (B) **expired after the date of the most recent general**
14 **election.**

15 (4) **The document was issued by the United States or the state**
16 **of Indiana.**

17 SECTION 2. IC 3-10-1-7.2 IS ADDED TO THE INDIANA CODE

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1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2005]: Sec. 7.2. (a) A voter who desires to vote an official ballot
3 at a primary election shall provide proof of identification.

4 (b) Before the voter proceeds to vote in a primary election, a
5 member of the precinct election board shall ask the voter to
6 provide proof of identification. The voter must produce the proof
7 of identification before being permitted to sign the poll list.

8 (c) If:

9 (1) the voter is unable or declines to present the proof of
10 identification; or

11 (2) a member of the precinct election board determines that
12 the proof of identification presented by the voter does not
13 qualify as proof of identification under IC 3-5-2-40.4;

14 a member of the precinct election board shall challenge the voter
15 as prescribed by IC 3-11-8.

16 (d) If the voter executes a challenged voter's affidavit under
17 section 9 of this chapter or IC 3-11-8-22, the voter may:

18 (1) sign the poll list; and

19 (2) receive a provisional ballot.

20 SECTION 3. IC 3-11-8-25 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 25. (a) A voter who
22 desires to vote an official ballot at an election shall provide proof
23 of identification.

24 (b) Before the voter proceeds to vote in the election, a member
25 of the precinct election board shall ask the voter to provide proof
26 of identification. The voter shall produce the proof of identification
27 before being permitted to sign the poll list.

28 (c) If:

29 (1) the voter is unable or declines to present the proof of
30 identification; or

31 (2) a member of the precinct election board determines that
32 the proof of identification provided by the voter does not
33 qualify as proof of identification under IC 3-5-2-40.4;

34 a member of the precinct election board shall challenge the voter
35 as prescribed by this chapter.

36 (d) If the voter executes a challenged voter's affidavit under
37 section 22 of this chapter, the voter may:

38 (1) sign the poll list; and

39 (2) receive a provisional ballot.

40 ~~(a)~~ (e) After a voter has passed the challengers or has been sworn in,
41 the voter shall be admitted to the polls. Upon entering the polls,
42 instructed by a member of the precinct election board to proceed

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1 **to the location where the poll clerks are stationed.** The voter shall
 2 announce the voter's name to the poll clerks or assistant poll clerks. A
 3 poll clerk, an assistant poll clerk, or a member of the precinct election
 4 board shall require the voter to write the following on the poll list:

5 (1) The voter's name.

6 (2) The voter's current residence address.

7 ~~(b)~~ **(f)** The poll clerk, an assistant poll clerk, or a member of the
 8 precinct election board shall:

9 (1) ask the voter to provide the voter's voter identification
 10 number;

11 (2) tell the voter the number the voter may use as a voter
 12 identification number; and

13 (3) explain to the voter that the voter is not required to provide a
 14 voter identification number at the polls.

15 ~~(c)~~ **This subsection applies after December 31, 2003.**

16 **(g)** The poll clerk or assistant poll clerk shall examine the list
 17 provided under IC 3-7-29-1 or IC 3-11-3-18 to determine if the county
 18 election board has indicated that the voter is required to provide
 19 additional personal identification under 42 U.S.C. 15483 and
 20 IC 3-7-33-4.5 before voting in person. If the list (or a certification
 21 concerning absentee voters under IC 3-11-10-12) indicates that the
 22 voter is required to present this identification before voting in person,
 23 the poll clerk shall advise the voter that the voter must present, **in**
 24 **addition to the proof of identification required under subsection**
 25 **(b),** a piece of identification described in subsection ~~(d)~~ **(h)** to the poll
 26 clerk.

27 ~~(d)~~ **This subsection applies after December 31, 2003.**

28 **(h)** As required by 42 U.S.C. 15483, **in addition to the proof of**
 29 **identification required under subsection (b),** a voter described by
 30 IC 3-7-33-4.5 who has not complied with IC 3-7-33-4.5 before
 31 appearing at the polls on election day must present one (1) of the
 32 following documents to the poll clerk:

33 (1) a current and valid photo identification; or

34 (2) a current utility bill, bank statement, government check,
 35 paycheck, or government document that shows the name and
 36 address of the voter.

37 ~~(e)~~ **This subsection applies after December 31, 2003.**

38 **(i)** If a voter presents a document under subsection ~~(d)~~ **(h),** the poll
 39 clerk shall add a notation to the list indicating the type of document
 40 presented by the voter. The election division shall prescribe a
 41 standardized coding system to classify documents presented under this
 42 subsection for entry into the county voter registration system.

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~~(f)~~ This subsection applies after December 31, 2003.

~~(j)~~ If a voter required to present documentation under subsection ~~(d)~~ **(H)** is unable to present the documentation to the poll clerk while present in the polls, the poll clerk shall notify the precinct election board. The board shall provide a provisional ballot to the voter under IC 3-11.7-2.

~~(g)~~ This subsection applies after December 31, 2003.

(k) The precinct election board shall advise the voter that the voter may file a copy of the documentation with the county voter registration office to permit the provisional ballot to be counted under IC 3-11.7.

~~(h)~~ **(l)** This subsection does not apply to a precinct in a county with a computerized registration system whose inspector was:

- (1) furnished with a list certified under IC 3-7-29; and
- (2) not furnished with a certified photocopy of the signature on the affidavit of registration of each voter of the precinct for the comparison of signatures under this section.

In case of doubt concerning a voter's identity, the precinct election board shall compare the voter's signature with the signature on the affidavit of registration or any certified copy of the signature provided under IC 3-7-29. If the board determines that the voter's signature is authentic, the voter may then vote. If either poll clerk doubts the voter's identity following comparison of the signatures, the poll clerk shall challenge the voter in the manner prescribed by section 21 of this chapter.

~~(i)~~ **(m)** If, in a precinct governed by subsection ~~(h)~~ **(l)**:

- (1) the poll clerk does not execute a challenger's affidavit; or
- (2) the voter executes a challenged voter's affidavit under section 22 of this chapter or had executed the affidavit before signing the poll list;

the voter may then vote.

~~(j)~~ **(n)** This section expires January 1, 2006.

SECTION 4. IC 3-11-8-25.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 25.1. (a) This section applies after December 31, 2005.

(b) A voter who desires to vote an official ballot at an election shall provide proof of identification.

(c) Before the voter proceeds to vote in the election, a member of the precinct election board shall ask the voter to provide proof of identification. The voter shall produce the proof of identification before being permitted to sign the poll list.

(d) If:

- (1) the voter is unable or declines to present the proof of**

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1 identification; or

2 (2) a member of the precinct election board determines that
3 the proof of identification provided by the voter does not
4 qualify as proof of identification under IC 3-5-2-40.4;

5 a member of the precinct election board shall challenge the voter
6 as prescribed by this chapter.

7 (e) If the voter executes a challenged voter's affidavit under
8 section 22 of this chapter, the voter may:

9 (1) sign the poll list; and

10 (2) receive a provisional ballot.

11 ~~(b)~~ (f) After a voter has passed the challengers or has been sworn in,
12 the voter shall be admitted to the polls. Upon entering the polls,
13 instructed by a member of the precinct election board to proceed
14 to the location where the poll clerks are stationed. The voter shall
15 announce the voter's name to the poll clerks or assistant poll clerks. A
16 poll clerk, an assistant poll clerk, or a member of the precinct election
17 board shall require the voter to write the following on the poll list:

18 (1) The voter's name.

19 (2) Except as provided in subsection ~~(f)~~; (k), the voter's current
20 residence address.

21 ~~(c)~~ (g) The poll clerk, an assistant poll clerk, or a member of the
22 precinct election board shall:

23 (1) ask the voter to provide or update the voter's voter
24 identification number;

25 (2) tell the voter the number the voter may use as a voter
26 identification number; and

27 (3) explain to the voter that the voter is not required to provide or
28 update a voter identification number at the polls.

29 (h) The poll clerk, an assistant poll clerk, or a member of the
30 precinct election board shall ask the voter to provide proof of
31 identification.

32 ~~(d)~~ (i) In case of doubt concerning a voter's identity, the precinct
33 election board shall compare the voter's signature with the signature on
34 the affidavit of registration or any certified copy of the signature
35 provided under IC 3-7-29. If the board determines that the voter's
36 signature is authentic, the voter may then vote. If either poll clerk
37 doubts the voter's identity following comparison of the signatures, the
38 poll clerk shall challenge the voter in the manner prescribed by section
39 21 of this chapter.

40 ~~(e)~~ (j) If, in a precinct governed by subsection ~~(c)~~; (g):

41 (1) the poll clerk does not execute a challenger's affidavit; or

42 (2) the voter executes a challenged voter's affidavit under section

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1 22 of this chapter or executed the affidavit before signing the poll
 2 list;
 3 the voter may then vote.

4 ~~(f)~~ **(k)** Each line on a poll list sheet provided to take a voter's current
 5 address must include a box under the heading "Address Unchanged"
 6 so that a voter whose residence address shown on the poll list is the
 7 voter's current residence address may check the box instead of writing
 8 the voter's current residence address on the poll list.

9 SECTION 5. IC 3-11-8-25.2 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 25.2. (a) This section
 11 applies after December 31, 2005.

12 (b) The poll clerk or assistant poll clerk shall examine the list
 13 provided under IC 3-7-29-1 to determine if the county election board
 14 has indicated that the voter is required to provide additional personal
 15 identification under 42 U.S.C. 15483 and IC 3-7-33-4.5 before voting
 16 in person. If the list (or a certification concerning absentee voters under
 17 IC 3-11-10-12) indicates that the voter is required to present this
 18 identification before voting in person, the poll clerk shall advise the
 19 voter that the voter must present, **in addition to the proof of**
 20 **identification required by section 25.1(b) of this chapter**, a piece of
 21 identification described in subsection (c) to the poll clerk.

22 (c) As required by 42 U.S.C. 15483, **and in addition to the proof**
 23 **of identification required by section 25.1(b) of this chapter**, a voter
 24 described by IC 3-7-33-4.5 who has not complied with IC 3-7-33-4.5
 25 before appearing at the polls on election day must present one (1) of the
 26 following documents to the poll clerk:

27 (1) A current and valid photo identification.

28 (2) A current utility bill, bank statement, government check,
 29 paycheck, or government document that shows the name and
 30 address of the voter.

31 (d) If a voter presents a document under subsection (c), the poll
 32 clerk shall add a notation to the list indicating the type of document
 33 presented by the voter. The election division shall prescribe a
 34 standardized coding system to classify documents presented under this
 35 subsection for entry into the county voter registration system.

36 (e) If a voter required to present documentation under subsection (c)
 37 is unable to present the documentation to the poll clerk while present
 38 in the polls, the poll clerk shall notify the precinct election board. The
 39 board shall provide a provisional ballot to the voter under IC 3-11.7-2.

40 (f) The precinct election board shall advise the voter that the voter
 41 may file a copy of the documentation with the county voter registration
 42 office to permit the provisional ballot to be counted under IC 3-11.7.

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SECTION 6. IC 3-11-8-25.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 25.5. If an individual signs the individual's name and either:

- (1) signs the individual's address; or
- (2) after December 31, 2005, checks the "Address Unchanged" box;

on the poll list under section 25 **or 25.1** of this chapter and then leaves the polls without casting a ballot or after casting a provisional ballot, the voter may not be permitted to reenter the polls to cast a ballot at the election.

SECTION 7. IC 3-11-8-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 29. **(a) This section does not apply to a list kept by a poll clerk under section 10.5 of this chapter.**

(b) A precinct election board may not keep a poll list other than the poll list required by section 25 **or 25.1** of this chapter.

SECTION 8. IC 3-11-10-1.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.2. An absentee voter is not required to provide proof of identification when:**

- (1) mailing, delivering, or transmitting an absentee ballot under section 1 of this chapter; or**
- (2) voting before an absentee board under this chapter.**

SECTION 9. IC 3-11-10-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 22. **(a)** If an absentee ballot is challenged under section 21 of this chapter, the absentee voter's application for an absentee ballot shall be considered as the affidavit required to be made by a voter when challenged at the polls while voting in person. ~~In all other respects~~

(b) Except as provided in subsection (c), the challenge procedure under this section is the same as though the ballot was cast by the voter in person.

(c) An absentee voter is not required to provide proof of identification.

(d) If a proper affidavit is made that would entitle the absentee voter to vote if the absentee voter had personally appeared, then the absentee ballot shall be placed in the ballot box.

SECTION 10. IC 3-11.5-4-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. **(a)** If an absentee ballot is challenged under section 15 of this chapter, the absentee voter's application for an absentee ballot shall be considered as the affidavit required to be made by a voter when challenged at the polls

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while voting in person. ~~In all other respects,~~

(b) Except as provided in subsection (c), the challenge procedure under this section is the same as though the ballot was cast by the voter in person.

(c) An absentee voter is not required to provide proof of identification.

~~(b)~~ **(d)** If a proper affidavit by a qualified person in the form required by IC 3-11-8-22 is made that would entitle the absentee voter to vote if the absentee voter had personally appeared, the couriers shall return the affidavit to the county election board in the same envelope as the certificate returned under section 9 of this chapter.

~~(c)~~ **(e)** The absentee ballot cast by the challenged voter shall be counted if the county election board makes the findings required under section 11 of this chapter.

SECTION 11. IC 3-11.7-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) The precinct election board shall affix to the envelope the challenger's affidavit and the affidavit executed by the provisional voter under section 1 of this chapter.

(b) The form of the envelope is prescribed under IC 3-6-4.1-14. The envelope must permit a member of a precinct election board to indicate whether the voter has been issued a provisional ballot as the result of a challenge based on the voter's inability or declination to provide proof of identification.

~~(b)~~ **(c)** Except as provided in subsection ~~(c)~~ **(d)** and in accordance with 42 U.S.C. 15482, the precinct election board shall securely keep the sealed envelope, along with the affidavits affixed to the envelope, in another envelope or container marked "Provisional Ballots".

~~(c)~~ **(d)** This subsection applies to the sealed envelope and the affidavits affixed to the envelope of a provisional voter described in section 1(a)(3) of this chapter. As required by 42 U.S.C. 15482, the precinct election board shall keep the sealed envelope or container separate from the envelope or container described in subsection ~~(b)~~. **(c).** The envelope or container described in this subsection must be labeled "Provisional Ballots Issued After Regular Poll Closing Hours".

SECTION 12. IC 3-11.7-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Except as provided in section 5 of this chapter, if the county election board determines that all the following apply, a provisional ballot is valid and shall be counted under this chapter:

- (1) The affidavit executed by the provisional voter under IC 3-11.7-2-1 is properly executed.

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(2) The provisional voter is a qualified voter of the precinct **and has provided proof of identification, if required, under IC 3-10-1 or IC 3-11-8.**

(3) Based on all the information available to the county election board, including:

(A) information provided by the provisional voter;

(B) information contained in the county's voter registration records; and

(C) information contained in the statewide voter registration file;

the provisional voter registered to vote at a registration agency under this article on a date within the registration period.

(b) If the provisional voter has provided information regarding the registration agency where the provisional voter registered to vote, the board shall promptly make an inquiry to the agency regarding the alleged registration. The agency shall respond to the board not later than noon of the first Friday after the election, indicating whether the agency's records contain any information regarding the registration. If the agency does not respond to the board's inquiry, or if the agency responds that the agency has no record of the alleged registration, the board shall reject the provisional ballot. The board shall endorse the ballot with the word "Rejected" and document on the ballot the inquiry and response, if any, by the agency.

(c) ~~This subsection applies after December 31, 2003:~~ Except as provided in section 5 of this chapter, a provisional ballot cast by a voter described in IC 3-11.7-2-1(b) is valid and shall be counted if the county election board determines under this article that the voter filed the documentation required under IC 3-7-33-4.5 and 42 U.S.C. 15483 with the county voter registration office not later than the closing of the polls on election day.

SECTION 13. IC 3-11.7-5-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2.5. (a) A voter who:**

(1) was challenged under IC 3-10-1 or IC 3-11-8 as a result of the voter's inability or declination to provide proof of identification; and

(2) cast a provisional ballot;

may personally appear before the circuit court clerk or the county election board not later than the deadline specified by section 1 of this chapter for the county election board to determine whether to count a provisional ballot.

(b) Except as provided in subsection (c) or (e), if the voter:

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(1) provides proof of identification to the circuit court clerk or county election board; and

(2) executes an affidavit before the clerk or board, in the form prescribed by the commission, affirming under the penalties of perjury that the voter is the same individual who:

(A) personally appeared before the precinct election board; and

(B) cast the provisional ballot on election day;

the county election board shall find that the voter's provisional ballot is valid and direct that the provisional ballot be opened under section 4 of this chapter and processed in accordance with this chapter.

(c) If the voter executes an affidavit before the circuit court clerk or county election board, in the form prescribed by the commission, affirming under the penalties of perjury that:

(1) the voter is the same individual who:

(A) personally appeared before the precinct election board; and

(B) cast the provisional ballot on election day; and

(2) the voter:

(A) is:

(i) indigent; and

(ii) unable to obtain proof of identification without the payment of a fee; or

(B) has a religious objection to being photographed;

the county election board shall determine whether the voter has been challenged for any reason other than the voter's inability or declination to present proof of identification to the precinct election board.

(d) If the county election board determines that the voter described in subsection (c) has been challenged solely for the inability or declination of the voter to provide proof of identification, the county election board shall:

(1) find that the voter's provisional ballot is valid; and

(2) direct that the provisional ballot be:

(A) opened under section 4 of this chapter; and

(B) processed in accordance with this chapter.

(e) If the county election board determines that a voter described in subsection (b) or (c) has been challenged for a cause other than the voter's inability or declination to provide proof of identification, the board shall:

(1) note on the envelope containing the provisional ballot that

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1 the voter has complied with the proof of identification
2 requirement; and

3 (2) proceed to determine the validity of the remaining
4 challenges set forth in the challenge affidavit before ruling on
5 the validity of the voter's provisional ballot.

6 (f) If a voter described by subsection (a) fails by the deadline for
7 counting provisional ballots referenced in subsection (a) to:

8 (1) appear before the county election board; and

9 (2) execute an affidavit in the manner prescribed by
10 subsection (b) or (c);

11 the county election board shall find that the voter's provisional
12 ballot is invalid.

13 SECTION 14. IC 3-11.7-5-3 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) If the board
15 determines that the affidavit executed by the provisional voter has not
16 been properly executed, that the provisional voter is not a qualified
17 voter of the precinct, **that the voter failed to provide proof of**
18 **identification when required under IC 3-10-1 or IC 3-11-8**, or that
19 the provisional voter did not register to vote at a registration agency
20 under this article on a date within the registration period, the board
21 shall make the following findings:

22 (1) The provisional ballot is invalid.

23 (2) The provisional ballot may not be counted.

24 (3) The provisional ballot envelope containing the ballots cast by
25 the provisional voter may not be opened.

26 (b) If the county election board determines that a provisional ballot
27 is invalid, a notation shall be made on the provisional ballot envelope:
28 "Provisional ballot determined invalid".

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Elections and Apportionment, to which was referred House Bill 1439, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 3, delete "UPON PASSAGE]:" and insert "JULY 1, 2005]:".

Page 1, delete lines 5 through 17, begin a new line block indented and insert:

"(1) The document shows the name of the individual to whom the document was issued, and the name conforms to the name in the individual's voter registration record.

(2) The document shows a photograph of the individual to whom the document was issued.

(3) The document includes an expiration date, and the document:

(A) is not expired; or

(B) expired after the date of the most recent general election.

(4) The document was issued by the United States or the state of Indiana.

SECTION 2. IC 3-10-1-7.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 7.2. (a) A voter who desires to vote an official ballot at a primary election shall provide proof of identification.**

(b) Before the voter proceeds to vote in a primary election, a member of the precinct election board shall ask the voter to provide proof of identification. The voter must produce the proof of identification before being permitted to sign the poll list.

(c) If:

(1) the voter is unable or declines to present the proof of identification; or

(2) a member of the precinct election board determines that the proof of identification presented by the voter does not qualify as proof of identification under IC 3-5-2-40.4;

a member of the precinct election board shall challenge the voter as prescribed by IC 3-11-8.

(d) If the voter executes a challenged voter's affidavit under section 9 of this chapter or IC 3-11-8-22, the voter may:

(1) sign the poll list; and

(2) receive a provisional ballot.

SECTION 3. IC 3-11-8-25 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 25. **(a) A voter who desires to vote an official ballot at an election shall provide proof of identification.**

(b) Before the voter proceeds to vote in the election, a member of the precinct election board shall ask the voter to provide proof of identification. The voter shall produce the proof of identification before being permitted to sign the poll list.

(c) If:

(1) the voter is unable or declines to present the proof of identification; or

(2) a member of the precinct election board determines that the proof of identification provided by the voter does not qualify as proof of identification under IC 3-5-2-40.4;

a member of the precinct election board shall challenge the voter as prescribed by this chapter.

(d) If the voter executes a challenged voter's affidavit under section 22 of this chapter, the voter may:

(1) sign the poll list; and

(2) receive a provisional ballot.

~~(a)~~ **(e) After a voter has passed the challengers or has been sworn in, the voter shall be admitted to the polls. Upon entering the polls, instructed by a member of the precinct election board to proceed to the location where the poll clerks are stationed. The voter shall announce the voter's name to the poll clerks or assistant poll clerks. A poll clerk, an assistant poll clerk, or a member of the precinct election board shall require the voter to write the following on the poll list:**

(1) The voter's name.

(2) The voter's current residence address.

~~(b)~~ **(f) The poll clerk, an assistant poll clerk, or a member of the precinct election board shall:**

(1) ask the voter to provide the voter's voter identification number;

(2) tell the voter the number the voter may use as a voter identification number; and

(3) explain to the voter that the voter is not required to provide a voter identification number at the polls.

~~(c)~~ **This subsection applies after December 31, 2003.**

(g) The poll clerk or assistant poll clerk shall examine the list provided under IC 3-7-29-1 or IC 3-11-3-18 to determine if the county election board has indicated that the voter is required to provide additional personal identification under 42 U.S.C. 15483 and IC 3-7-33-4.5 before voting in person. If the list (or a certification

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concerning absentee voters under IC 3-11-10-12) indicates that the voter is required to present this identification before voting in person, the poll clerk shall advise the voter that the voter must present, **in addition to the proof of identification required under subsection (b)**, a piece of identification described in subsection ~~(d)~~ **(h)** to the poll clerk.

~~(d)~~ This subsection applies after December 31, 2003.

(h) As required by 42 U.S.C. 15483, **in addition to the proof of identification required under subsection (b)**, a voter described by IC 3-7-33-4.5 who has not complied with IC 3-7-33-4.5 before appearing at the polls on election day must present one (1) of the following documents to the poll clerk:

- (1) a current and valid photo identification; or
- (2) a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter.

~~(e)~~ This subsection applies after December 31, 2003.

(i) If a voter presents a document under subsection ~~(d)~~ **(h)**, the poll clerk shall add a notation to the list indicating the type of document presented by the voter. The election division shall prescribe a standardized coding system to classify documents presented under this subsection for entry into the county voter registration system.

~~(f)~~ This subsection applies after December 31, 2003.

(j) If a voter required to present documentation under subsection ~~(d)~~ **(H)** is unable to present the documentation to the poll clerk while present in the polls, the poll clerk shall notify the precinct election board. The board shall provide a provisional ballot to the voter under IC 3-11.7-2.

~~(g)~~ This subsection applies after December 31, 2003.

(k) The precinct election board shall advise the voter that the voter may file a copy of the documentation with the county voter registration office to permit the provisional ballot to be counted under IC 3-11.7.

~~(h)~~ **(l)** This subsection does not apply to a precinct in a county with a computerized registration system whose inspector was:

- (1) furnished with a list certified under IC 3-7-29; and
- (2) not furnished with a certified photocopy of the signature on the affidavit of registration of each voter of the precinct for the comparison of signatures under this section.

In case of doubt concerning a voter's identity, the precinct election board shall compare the voter's signature with the signature on the affidavit of registration or any certified copy of the signature provided under IC 3-7-29. If the board determines that the voter's signature is

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authentic, the voter may then vote. If either poll clerk doubts the voter's identity following comparison of the signatures, the poll clerk shall challenge the voter in the manner prescribed by section 21 of this chapter.

~~(i)~~ **(m)** If, in a precinct governed by subsection ~~(h)~~: **(l)**:

- (1) the poll clerk does not execute a challenger's affidavit; or
- (2) the voter executes a challenged voter's affidavit under section 22 of this chapter or had executed the affidavit before signing the poll list;

the voter may then vote.

~~(j)~~ **(n)** This section expires January 1, 2006.

SECTION 4. IC 3-11-8-25.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 25.1. (a) This section applies after December 31, 2005.

(b) A voter who desires to vote an official ballot at an election shall provide proof of identification.

(c) Before the voter proceeds to vote in the election, a member of the precinct election board shall ask the voter to provide proof of identification. The voter shall produce the proof of identification before being permitted to sign the poll list.

(d) If:

- (1) the voter is unable or declines to present the proof of identification; or**
- (2) a member of the precinct election board determines that the proof of identification provided by the voter does not qualify as proof of identification under IC 3-5-2-40.4;**

a member of the precinct election board shall challenge the voter as prescribed by this chapter.

(e) If the voter executes a challenged voter's affidavit under section 22 of this chapter, the voter may:

- (1) sign the poll list; and**
- (2) receive a provisional ballot.**

~~(b)~~ **(f)** After a voter has passed the challengers or has been sworn in, the voter shall be ~~admitted to the polls. Upon entering the polls,~~ **instructed by a member of the precinct election board to proceed to the location where the poll clerks are stationed.** The voter shall announce the voter's name to the poll clerks or assistant poll clerks. A poll clerk, an assistant poll clerk, or a member of the precinct election board shall require the voter to write the following on the poll list:

- (1) The voter's name.**
- (2) Except as provided in subsection ~~(f)~~, **(k)**, the voter's current residence address.**

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~~(c)~~ (g) The poll clerk, an assistant poll clerk, or a member of the precinct election board shall:

- (1) ask the voter to provide or update the voter's voter identification number;
- (2) tell the voter the number the voter may use as a voter identification number; and
- (3) explain to the voter that the voter is not required to provide or update a voter identification number at the polls.

(h) The poll clerk, an assistant poll clerk, or a member of the precinct election board shall ask the voter to provide proof of identification.

~~(d)~~ (i) In case of doubt concerning a voter's identity, the precinct election board shall compare the voter's signature with the signature on the affidavit of registration or any certified copy of the signature provided under IC 3-7-29. If the board determines that the voter's signature is authentic, the voter may then vote. If either poll clerk doubts the voter's identity following comparison of the signatures, the poll clerk shall challenge the voter in the manner prescribed by section 21 of this chapter.

~~(e)~~ (j) If, in a precinct governed by subsection ~~(c)~~: (g):

- (1) the poll clerk does not execute a challenger's affidavit; or
- (2) the voter executes a challenged voter's affidavit under section 22 of this chapter or executed the affidavit before signing the poll list;

the voter may then vote.

~~(f)~~ (k) Each line on a poll list sheet provided to take a voter's current address must include a box under the heading "Address Unchanged" so that a voter whose residence address shown on the poll list is the voter's current residence address may check the box instead of writing the voter's current residence address on the poll list.

SECTION 5. IC 3-11-8-25.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 25.2. (a) This section applies after December 31, 2005.

(b) The poll clerk or assistant poll clerk shall examine the list provided under IC 3-7-29-1 to determine if the county election board has indicated that the voter is required to provide additional personal identification under 42 U.S.C. 15483 and IC 3-7-33-4.5 before voting in person. If the list (or a certification concerning absentee voters under IC 3-11-10-12) indicates that the voter is required to present this identification before voting in person, the poll clerk shall advise the voter that the voter must present, **in addition to the proof of identification required by section 25.1(b) of this chapter**, a piece of

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identification described in subsection (c) to the poll clerk.

(c) As required by 42 U.S.C. 15483, **and in addition to the proof of identification required by section 25.1(b) of this chapter**, a voter described by IC 3-7-33-4.5 who has not complied with IC 3-7-33-4.5 before appearing at the polls on election day must present one (1) of the following documents to the poll clerk:

- (1) A current and valid photo identification.
- (2) A current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter.

(d) If a voter presents a document under subsection (c), the poll clerk shall add a notation to the list indicating the type of document presented by the voter. The election division shall prescribe a standardized coding system to classify documents presented under this subsection for entry into the county voter registration system.

(e) If a voter required to present documentation under subsection (c) is unable to present the documentation to the poll clerk while present in the polls, the poll clerk shall notify the precinct election board. The board shall provide a provisional ballot to the voter under IC 3-11-7-2.

(f) The precinct election board shall advise the voter that the voter may file a copy of the documentation with the county voter registration office to permit the provisional ballot to be counted under IC 3-11-7.

SECTION 6. IC 3-11-8-25.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 25.5. If an individual signs the individual's name and either:

- (1) signs the individual's address; or
- (2) after December 31, 2005, checks the "Address Unchanged" box;

on the poll list under section 25 **or 25.1** of this chapter and then leaves the polls without casting a ballot or after casting a provisional ballot, the voter may not be permitted to reenter the polls to cast a ballot at the election.

SECTION 7. IC 3-11-8-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 29. **(a) This section does not apply to a list kept by a poll clerk under section 10.5 of this chapter.**

(b) A precinct election board may not keep a poll list other than the poll list required by section 25 **or 25.1** of this chapter.

SECTION 8. IC 3-11-10-1.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.2. An absentee voter is not required to provide proof of identification when:**

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(1) mailing, delivering, or transmitting an absentee ballot under section 1 of this chapter; or

(2) voting before an absentee board under this chapter.

SECTION 9. IC 3-11-10-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 22. **(a)** If an absentee ballot is challenged under section 21 of this chapter, the absentee voter's application for an absentee ballot shall be considered as the affidavit required to be made by a voter when challenged at the polls while voting in person. ~~In all other respects~~

(b) Except as provided in subsection (c), the challenge procedure under this section is the same as though the ballot was cast by the voter in person.

(c) An absentee voter is not required to provide proof of identification.

(d) If a proper affidavit is made that would entitle the absentee voter to vote if the absentee voter had personally appeared, then the absentee ballot shall be placed in the ballot box.

SECTION 10. IC 3-11.5-4-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. **(a)** If an absentee ballot is challenged under section 15 of this chapter, the absentee voter's application for an absentee ballot shall be considered as the affidavit required to be made by a voter when challenged at the polls while voting in person. ~~In all other respects,~~

(b) Except as provided in subsection (c), the challenge procedure under this section is the same as though the ballot was cast by the voter in person.

(c) An absentee voter is not required to provide proof of identification.

~~(b)~~ **(d)** If a proper affidavit by a qualified person in the form required by IC 3-11-8-22 is made that would entitle the absentee voter to vote if the absentee voter had personally appeared, the couriers shall return the affidavit to the county election board in the same envelope as the certificate returned under section 9 of this chapter.

~~(c)~~ **(e)** The absentee ballot cast by the challenged voter shall be counted if the county election board makes the findings required under section 11 of this chapter.

SECTION 11. IC 3-11.7-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. **(a)** The precinct election board shall affix to the envelope the challenger's affidavit and the affidavit executed by the provisional voter under section 1 of this chapter.

(b) The form of the envelope is prescribed under IC 3-6-4.1-14.

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The envelope must permit a member of a precinct election board to indicate whether the voter has been issued a provisional ballot as the result of a challenge based on the voter's inability or declination to provide proof of identification.

~~(b)~~ (c) Except as provided in subsection ~~(c)~~ (d) and in accordance with 42 U.S.C. 15482, the precinct election board shall securely keep the sealed envelope, along with the affidavits affixed to the envelope, in another envelope or container marked "Provisional Ballots".

~~(c)~~ (d) This subsection applies to the sealed envelope and the affidavits affixed to the envelope of a provisional voter described in section 1(a)(3) of this chapter. As required by 42 U.S.C. 15482, the precinct election board shall keep the sealed envelope or container separate from the envelope or container described in subsection ~~(b)~~.
(c). The envelope or container described in this subsection must be labeled "Provisional Ballots Issued After Regular Poll Closing Hours".

SECTION 12. IC 3-11.7-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Except as provided in section 5 of this chapter, if the county election board determines that all the following apply, a provisional ballot is valid and shall be counted under this chapter:

- (1) The affidavit executed by the provisional voter under IC 3-11.7-2-1 is properly executed.
- (2) The provisional voter is a qualified voter of the precinct **and has provided proof of identification, if required, under IC 3-10-1 or IC 3-11-8.**
- (3) Based on all the information available to the county election board, including:
 - (A) information provided by the provisional voter;
 - (B) information contained in the county's voter registration records; and
 - (C) information contained in the statewide voter registration file;

the provisional voter registered to vote at a registration agency under this article on a date within the registration period.

(b) If the provisional voter has provided information regarding the registration agency where the provisional voter registered to vote, the board shall promptly make an inquiry to the agency regarding the alleged registration. The agency shall respond to the board not later than noon of the first Friday after the election, indicating whether the agency's records contain any information regarding the registration. If the agency does not respond to the board's inquiry, or if the agency responds that the agency has no record of the alleged registration, the

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board shall reject the provisional ballot. The board shall endorse the ballot with the word "Rejected" and document on the ballot the inquiry and response, if any, by the agency.

(c) ~~This subsection applies after December 31, 2003:~~ Except as provided in section 5 of this chapter, a provisional ballot cast by a voter described in IC 3-11.7-2-1(b) is valid and shall be counted if the county election board determines under this article that the voter filed the documentation required under IC 3-7-33-4.5 and 42 U.S.C. 15483 with the county voter registration office not later than the closing of the polls on election day.

SECTION 13. IC 3-11.7-5-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2.5. (a) A voter who:**

(1) was challenged under IC 3-10-1 or IC 3-11-8 as a result of the voter's inability or declination to provide proof of identification; and

(2) cast a provisional ballot;

may personally appear before the circuit court clerk or the county election board not later than the deadline specified by section 1 of this chapter for the county election board to determine whether to count a provisional ballot.

(b) Except as provided in subsection (c) or (e), if the voter:

(1) provides proof of identification to the circuit court clerk or county election board; and

(2) executes an affidavit before the clerk or board, in the form prescribed by the commission, affirming under the penalties of perjury that the voter is the same individual who:

(A) personally appeared before the precinct election board; and

(B) cast the provisional ballot on election day;

the county election board shall find that the voter's provisional ballot is valid and direct that the provisional ballot be opened under section 4 of this chapter and processed in accordance with this chapter.

(c) If the voter executes an affidavit before the circuit court clerk or county election board, in the form prescribed by the commission, affirming under the penalties of perjury that:

(1) the voter is the same individual who:

(A) personally appeared before the precinct election board; and

(B) cast the provisional ballot on election day; and

(2) the voter:

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(A) is:

(i) indigent; and

(ii) unable to obtain proof of identification without the payment of a fee; or

(B) has a religious objection to being photographed;

the county election board shall determine whether the voter has been challenged for any reason other than the voter's inability or declination to present proof of identification to the precinct election board.

(d) If the county election board determines that the voter described in subsection (c) has been challenged solely for the inability or declination of the voter to provide proof of identification, the county election board shall:

(1) find that the voter's provisional ballot is valid; and

(2) direct that the provisional ballot be:

(A) opened under section 4 of this chapter; and

(B) processed in accordance with this chapter.

(e) If the county election board determines that a voter described in subsection (b) or (c) has been challenged for a cause other than the voter's inability or declination to provide proof of identification, the board shall:

(1) note on the envelope containing the provisional ballot that the voter has complied with the proof of identification requirement; and

(2) proceed to determine the validity of the remaining challenges set forth in the challenge affidavit before ruling on the validity of the voter's provisional ballot.

(f) If a voter described by subsection (a) fails by the deadline for counting provisional ballots referenced in subsection (a) to:

(1) appear before the county election board; and

(2) execute an affidavit in the manner prescribed by subsection (b) or (c);

the county election board shall find that the voter's provisional ballot is invalid.

SECTION 14. IC 3-11.7-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) If the board determines that the affidavit executed by the provisional voter has not been properly executed, that the provisional voter is not a qualified voter of the precinct, **that the voter failed to provide proof of identification when required under IC 3-10-1 or IC 3-11-8**, or that the provisional voter did not register to vote at a registration agency under this article on a date within the registration period, the board

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shall make the following findings:

- (1) The provisional ballot is invalid.
- (2) The provisional ballot may not be counted.
- (3) The provisional ballot envelope containing the ballots cast by the provisional voter may not be opened.

(b) If the county election board determines that a provisional ballot is invalid, a notation shall be made on the provisional ballot envelope: "Provisional ballot determined invalid".

Delete pages 2 through 6.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1439 as introduced.)

THOMAS, Chair

Committee Vote: yeas 7, nays 5.

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